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yet the decision clearly recognizes the possibility of such a judgment, if a proper case should come before the court, as otherwise the addition of the word trustee to the defendant's name, would be mere surplusage, and no ground for demurrer. The case follows a New York decision. *Keating v. Stevenson*, 24 N. Y. App. Div. 604. But other American decisions are *contra*. *Odd Fellows Hall Asso. v. McAllister*, 153 Mass. 292; *Blackstone Nat. Bank v. Lane*, 13 Atl. Rep. 683 (Me.); *Sass v. Hirschfield*, 56 S. W. Rep. 941 (Tex. Civ. App.).

It may be argued that the error in the principal case is merely an unimportant one of pleading. But at the present day certain causes tend strongly to make the courts recognize trustees in their representative capacity, so that any error is dangerous which suggests the propriety of such recognition. In the first place the courts enter judgment against receivers as such. The true ground for this is that receivers are mere officers of the court of equity. The court has title to the property, and without its consent no suit can be brought against them. Thus they differ fundamentally from trustees who, having title, come under any liability resulting from its possession. Yet receivers have been called quasi-trustees, and their liability placed by some courts on the same footing as that of ordinary trustees. *Camp v. Barney*, 4 Hun, 373. As a result, it has been sometimes felt that if judgment may be entered against a receiver as such, it ought to be entered against a trustee in a similar manner. In the second place, there are two instances in which creditors of trustees may reach the trust estate directly. Creditors of an insolvent trustee, who has a right to pay his indebtedness out of the trust property, may now, in many instances, reach such property itself in equity. 14 HARVARD LAW REVIEW, 67. Likewise it has become common for a trustee to enter into obligations expressly stipulating that he shall not be personally liable, and that creditors must look solely to the trust estate. In such cases an equitable lien on the estate has been sometimes allowed under proper circumstances. *Noyes v. Blakeman*, 6 N. Y. 567. These decisions, since they permit the creditor to look to the trust property rather than to the trustee for his security, are likely to strengthen the notion that the latter may have a position before the law in his representative capacity.

As the law of trustees has grown up solely under equity jurisdiction, the consequences of recognizing trustees at law would, if logically carried out, be far reaching. It would result, of course, that whenever the trustee was liable as such, he could not be personally liable, as necessarily but a single liability would be incurred either in the one capacity or the other. The greatest care in examining trust property would, therefore, have to be exercised by those dealing with trustees. It would likewise result that a trustee could not pass a good title to a *bona fide* purchaser for value, for, if he held title only in his representative capacity, he could not pass it in his personal capacity. Such fundamental changes as these, if ever thought advisable, ought only to be the results of legislation, and clearly could not have been contemplated by the court in the principal case.

VACATING SENTENCE IMPOSED UNDER PLEA OF GUILTY. — A rather unusual situation was presented in a recent case in Illinois. *People v. Arkins* (Criminal Ct., Cook Co.), 33 Chicago Legal News, 192. The defendant, on being arraigned under an indictment charging him with having

received stolen goods knowing them to be stolen, pleaded guilty, and was sentenced to the penitentiary. Subsequently he moved the court to vacate the sentence, and to grant him leave to withdraw his plea of guilty and to enter a plea of not guilty. It was proved that he had always protested his innocence, and had entered the plea of guilty only on the assurance of the prosecuting witness that the judge would at once discharge him. The court said that the plea of guilty was to be treated as a confession, and that being induced by hope of favor it would be set aside.

In so far as the opinion is based on the ground that a plea of guilty is to be governed by the rules applicable to confessions of guilt, the court seems to have confused matters of evidence with matters of pleading. It is true that a plea of guilty does presumably involve an acknowledgment of guilt, but it is in its nature so different from an ordinary confession that the two cannot be treated on the same basis. A confession is an admission of guilt which is to be used with probative force in determining the issue raised by the plea of not guilty. It is an item of evidence which may be overwhelmed by contrary evidence. But a plea of guilty is final; it does away with a trial, and is practically the same as a default in civil proceedings. It is evident that the question of allowing a withdrawal of the plea of guilty cannot with any fairness to the accused be settled within the technical rules concerning the introduction of confessions in evidence. This was partially recognized in the opinion in the principal case, where the promise of favor was made by the prosecuting witness, and not by any officer in authority, so that a confession under the circumstances would have been admissible.

The result reached in the case, however, is clearly correct, but the decision should have been rested on broader principles of criminal procedure. A plea of guilty, doing away with all need of proof of the crime, should be received with great caution, and only when the court is satisfied that the accused understands the situation and is acting voluntarily. *Com. v. Battis*, 1 Mass. 95. When it has once been entered, it lies entirely within the discretion of the court to grant permission to withdraw it. If the motion is made before judgment is pronounced, and is based on reasonable grounds, there is little difficulty in securing leave to change the plea. And although it has been thought that after judgment the plea must stand, *Reg. v. Sell*, 9 Car. & P. 346, this is opposed to the more general practice in cases where the sentence appears unjust to the accused. Thus, where the defendant, a foreigner, pleaded guilty without understanding the nature of the proceedings, the sentence was vacated, and "not guilty" entered. *Gardner v. People*, 106 Ill. 76. The same course was adopted where guilty was pleaded to save the prisoner from the fury of a mob, *Sanders v. State*, 85 Ind. 318, and where the defendant was induced to plead guilty by the promise of a lesser punishment than that which was later imposed. *State v. Stephens*, 71 Mo. 535. Even when the accused had actually spent seven years in prison under such a sentence, he was allowed a new trial. *State v. Calhoun*, 50 Kan. 523. On the other hand, when the plea was freely and understandingly entered, the court will not generally set aside a sentence. *People v. Lennox*, 67 Cal. 113. And since the question of permitting a withdrawal of the plea is addressed entirely to the discretion of the trial court, refusal to grant the request is not a ground for reversal by an appellate court, *Conover v. State*, 86 Ind. 99, unless there has been a clear "abuse of discretion." *Myers v. State*, 115 Ind. 554. In some states, however, the

defendant has, by statute, a right to withdraw the plea in all cases. *People v. Richmond*, 57 Mich. 399. Apart from such enactments, the question should be treated in a broad manner, unhampered by technical rules. On the one hand, the court must see that substantial justice is done to the defendant; on the other, it cannot allow a precedent by which an accused, fully understanding his situation, can plead guilty in the hope of judicial clemency, and then claim the right to withdraw his plea if the sentence is severe.

BILLS OF PEACE TO ENJOIN TORT ACTIONS.—The old conception of a bill of peace brought by several plaintiffs or against several defendants, requiring community of interest in the subject-matter among the persons joined, was long ago outgrown. *Mayor of York v. Pilkington*, 2 Atk. 302. Whether in the cases departing from the early rule the bill is properly called a bill of peace or a bill in the nature of a bill of peace, there is an overwhelming number of decisions in which the only community of interest was in the questions of law and fact involved and the relief sought. Pomeroy, Eq. Jur. 2d ed. §§ 261, note, 269. One court, however, has vigorously maintained that all these cases disclosed some recognized ground of equity jurisdiction other than the prevention of multiplicity of action, which is the basis of a bill of peace. *Tribette v. Illinois, etc. R. R. Co.*, 70 Miss. 882. A Tennessee case recently decided is in line with this opinion. Several actions for nuisance had been begun against a mining company which brought a bill to enjoin them on the ground that certain facts alleged constituted a common legal defence against all. The lower court dismissed the bill except as against three defendants who waived objection to the jurisdiction. No appeal was taken on this point, but the upper court indicated its approval of the position taken. *Ducktown Sulphur, etc. Co. v. Barnes*, 60 S. W. Rep. 593. The facts in *Tribette v. R. R. Co.*, *supra*, were similar and the decision the same. It seems hardly possible to sustain the narrow view of bills of peace which these two cases take. The only other case exactly parallel which has been found reaches the opposite result. *Guess v. Stone Mt., etc. Ry. Co.*, 67 Ga. 215. It is difficult to see any ground of equity jurisdiction in *Mayor of York v. Pilkington*, *supra*, except the identity of the question on which the several controversies turned. Other leading English and American cases are rested in the opinions solely on this ground. *Sheffield Waterworks v. Yeomans*, L. R. 2 Ch. App. 8. In the United States there is a class of cases, explainable only by the same principle, and supported by the weight of authority, in which several persons are allowed to bring a bill for an injunction against the collection of an illegal tax. *Carlton v. Newman*, 77 Me. 408. The contrary decisions in the tax cases rest on a ground foreign to this discussion. On principle the prevention of multiplicity of action seems a ground amply sufficient to support the jurisdiction in cases like the principal case, and no satisfactory reason has been found for restricting the scope of a just, convenient, and practical remedy.

The present case directly decides another interesting question. As between the plaintiff and those defendants who waived objection to the jurisdiction, the court decided that the alleged defence to the actions at law was not made out, and sustained a decree awarding to the three defendants damages for the nuisance. To this there are two objections. When the alleged common defence, which is the basis of the